

## **REMARKS**

Reconsideration of this application and allowance of the claims is requested.

Claims 1 and 23 are amended to provide proper antecedent basis.

The examiner has rejected claims 23-30 under 35 U.S.C. 112.

As a basis for this rejection, the examiner states. "The specification does not disclose a third transverse seal between the flat unfolded first and mesh sheets, as recited in claims 23 and 29."

The attention of the examiner is directed to page 4, lines 16 and 17 of the specification. There, third, transverse seal 44 between second sheet 32 and sheet portion 36 is disclosed, as illustrated in Fig. 1. The third transverse seal referred to by the examiner is item 44. The second transverse seal is item 30 in Fig. 1, connecting the mesh sheet 12 and second plastic sheet 32. The first transverse seal is illustrated by reference numeral 20, joining mesh sheet 12 and the first sheet portion 26.

Note in the second to last line of claim 23 on page 2 of the Amendment of May 19, 2003, that the third transverse seal is characterized as being "straight" and "...extending across the width of the bag." See specification page 4, lines 16-17. As can be seen from the disclosure on specification page 4, lines 14-20, this configuration claimed by claim 23 is an alternative configuration to the situation where the bag is "...gathered into a bunched-up neck 43, by a wire tie, hog ring, or the like, as indicated by arrows 45 for bag closure, as shown in the broken line portion of Fig. 2." (Page 4, lines 14-16).

Accordingly, it is believed that the language of claim 23 is proper and clear, being in compliance with 37 C.F.R. 1.112.

The examiner has also rejected claims 1, 2 and 14 as unpatentable over Meseguer German Patent Publication DE 297 20 932 U1 (note there appears to be an error in the examiner's citation on page 3 of the office action), in view of Fox U.S. Patent 6,190,044 B1.

The attention of the examiner is directed to a declaration under 37 C.F.R. 1.131 of Michael J. Recchia, Jr., dated December 11, 2001, and found in the file of Recchia, Jr. Patent No. 6,506,429, which issued January 14, 2003. This declaration relates to a rejection that was based on Fox, *et al.* U.S. Patent No. 6,190,044, having a filing date of July 8, 1999. This declaration was filed in Application No. 09/481,211 (now U.S. Patent No. 6,506,429) with Fox 6,190,044 in mind, as can be seen from the fact that the declaration supports the conception and diligent reduction to practice in the United States prior to July 8, 1999 of an invention which also relates to the invention of this application.

In the prior prosecution of Recchia Patent No. 6,506,429, claims 1 through 5 were granted, these claims relating to a plastic bag having a solid wall thermoplastic sheet and a mesh sheet peripherally sealed, and having one edge comprising a fold of the solid-wall thermoplastic sheet and not a heat seal, as particularly specified in those claims.

As the examiner understands, the claims of this present application also relate to such a bag, having a fold 22 at one end which is not a heat seal, and also having the facing plastic sheets 32, 36 at the other end.

A copy of this declaration will be provided to the examiner if that is convenient, but it is of course available in the file of Patent No. 6,506,429.

In view of this declaration, which successfully overcame the Fox Patent No. 6,190,044 as a prior reference, it is submitted that in this situation, with the same inventor, and in view of the facts alleged by the declaration, the examiner should withdraw Fox, *et al.* Patent No. 6,190,044 as a prior art reference here as well.

Thus, it is submitted that the rejection of claims 1, 2, and 14 should be withdrawn, since Meseguer fails to teach the claimed invention by itself.

Claims 3-5 are also rejected as unpatentable over Meseguer in view of Fox, *et al.* further in view of Mercademi European Patent No. 0788974 A2.

In the absence of the Fox reference, it is submitted that this rejection should be withdrawn, since claims 3-5 share the distinguishing limitations of claim 1, being dependent on claim 1.

Furthermore, Mercademi does not make up for the defects in the rejection, in that it fails to show at its bottom 9 the kind of folded over plastic sheet that is claimed herein, to define a pair of wall portions, with one of the wall portions in the mesh end each having a first end portion joined together with the first seal line, and the mesh end is spaced from the first bag end, as called for in claim 1.

Claims 6-13 are rejected as unpatentable over Meseguer in view of Fox, *et al.*, further in view of Yamagata Japanese Patent Publication JP411130089A and Cammack U.S. Patent No. 5,741,046. These relate to the third thermoplastic sheet 46, which is shown in Fig. 2 to be joined to the first sheet and the mesh sheet by the first seal line.

It is not understood exactly what component of each of Yamagata Japanese reference and Cammack the examiner thinks corresponds to the third sheet 46. The

examiner is requested to inform applicant's attorney which physical component is the analogue in each of those references to third sheet 46.

Of course, claims 6-13 are also ultimately dependent on claim 1, and thus share in the patentably distinguishing limitations of that claim.

In view of the above, allowance of claim 6-13 is respectfully requested.

The examiner has rejected claims 15, 21 and 22 as unpatentable over Meseguer in view of Fox *et al.*, in view of Wolski U.S. Patent No. 4,207,983 and Cammack. Claims 15, 21 and 22 relate to the wire tie or hog ring form of closure of the bag as indicated by reference numerals 43, 45, and the specification at page 4, lines 14-16.

Applicant's attorney acknowledges that such a bunching closure is not novel per se, but these claims share in the patentable distinctions of the claims from which they depend.

In view of the above, allowance of the claims is respectfully requested.

Respectfully submitted,

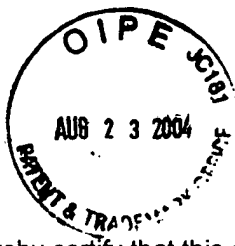
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